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Chief Assistant Attorney General
3 FRANCES T. GRUNDER
Senior Assistant Attorney General
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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 **BRADLEY M. HIXON,**

15 Plaintiff,

16 v.

17 **Correctional Officer J. CRUZEN,**

18 Defendant.
19

C 07-6078 WHA

**DECLARATION OF
CYNTHIA C. FRITZ IN
SUPPORT OF REPLY TO
PLAINTIFF'S OPPOSITION
TO MOTION TO DISMISS**

20 I, Cynthia C. Fritz, declare as follows:

21 1. I am an attorney admitted to practice before the courts of the State of California and
22 before this Court. I am employed by the California Attorney General's Office as a Deputy
23 Attorney General in the Correctional Law Section, and I am assigned to represent Defendant J.
24 Cruzen in this case. I am competent to testify to the matters set forth in this Declaration, and if
25 called upon to do so, I would and could so testify.

26 2. Attached as Exhibit A is a true and correct copy of Plaintiff's Opposition to
27 Defendant's Motion to Dismiss served on May 13, 2008.
28

1 I declare under penalty of perjury that the foregoing is true and correct and that this
2 declaration was executed on May 28, 2008, in San Francisco, California.

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5 CYNTHIA C. FRITZ
6 Deputy Attorney General
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EXHIBIT A

- 1

"OBJECTION"

Your Honor I OBJECT TO The Defendant's motion of Dismiss of Failure to Exhaust my Remedies.

Your Honor in Exhibits (A) I so filed my original 602 Appeal on Feb 10, 2008 to Mr. Medina with an Inmate Request form due to The fact That my 602 in Ad-Seg was coming up missing due to This prior Green wall behavior here at Salinas Valley. I also Send a Extra copy of my 602 Appeal for the Second level to Sacramento due to my original 602 came missing that letter would also be in Exhibits (A) on Feb 19, 2008 COTI Appeals coordinator Medina Send my Request Back Stating that my 602 Never went Through The mail enclosed is that Supporting fact.

In Exhibits (B) is (2) other different 602 Appeals of the Same incident I Send to Sacramento and Internal Affairs which was Send Back to S.V.S.P. and was processed as a duplicate Your Honor we Tried on many days and Times in Sending my 602 out and it never reached its place 602 See *Porter v. Nussle* 534 U.S. 516 (2002) & *Booth v. Churner* 532 U.S. 731 (2001)

Your Honor A prison Guards Actions are an action under "Color of State Law See *Monroe v. Pape* 365 U.S. 167 (1961) Cruzan was on The job exercising the power That Comes from his position or Authority so on

- 2

november 11, 2007 C/O Cruzen Threatened Cuffed and Slundered me with his cruel war of Harassment and discrimination by calling me a "Faggot Ass Bitch" So your Honor is doing so he violated my due process clause & Equal protection clause based on I'm suppose to be protected by these laws and that no prison offi are suppose to discriminate against me on the basis of my race or any other arbitrary category, such as my religion, nationality, sex, income, or political beliefs.

C/O Cruzen was suppose to follow any and all rules set forward in his position as an officer of CDCR. There for your Honor my 602 appeal should be consider EXHAUSTED

IT IS SO ORDERED

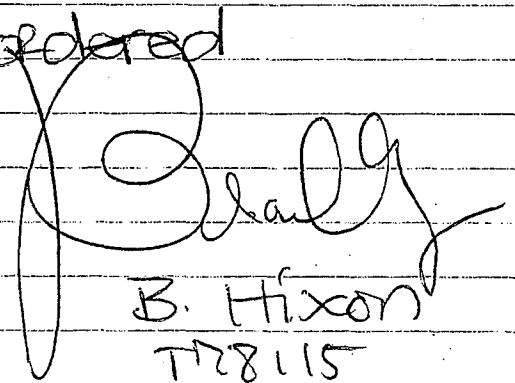
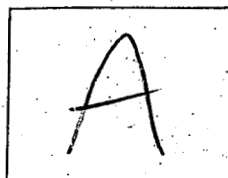

B. Hixon
T78115

EXHIBIT COVER PAGE



EXHIBIT

DESCRIPTION OF THIS EXHIBIT:

NUMBER OF PAGES TO THIS EXHIBIT: 6 PAGES

JURISDICTION: (CHECK ONLY ONE)

- ☐ MUNICIPAL COURT
- ☐ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☒ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

State of California

Memorandum

Date : January 8, 2008

To : Inmate Hixon, # T-78115

Subject: STAFF COMPLAINT RESPONSE - APPEAL # D-07-05091

APPEAL ISSUE: The appellant alleges Correctional Officer J. Cruzen made discriminating comments and alleges that Correctional Officer J. Cruzen stated that he was going to falsify documents in order to prevent his return to Facility A.

DETERMINATION OF ISSUE: A review of the allegations of staff misconduct presented in the written complaint has been completed. Based upon this review your appeal has been handled as follows:

- ☒ PROCESSED AS A STAFF COMPLAINT APPEAL INQUIRY
☐ REFERRED TO THE OFFICE OF INTERNAL AFFAIRS (OIA).

SUMMARY FOR APPEAL INQUIRY:

You were interviewed on January 8, 2008 by Correctional Lieutenant R. Mojica and stated there was nothing further to add to what was written in the appeal. The appellant further stated that names could not be provided of staff or inmates to corroborate the story.

☒ A Confidential Inquiry ^{WAS} ~~will be~~ conducted. There were no witness(es) questioned as the appellant failed to provide any. The following information was reviewed as a result of your allegations of staff misconduct: this appeal and its entire contents.

☐ This matter has been referred to the Office of Internal Affairs for follow-up and a possible investigation. If investigated, upon completion of that investigation you will be notified as to whether the allegations were SUSTAINED, NOT SUSTAINED, UNFOUNDED, EXONERATED or that NO FINDING was possible.. In the event that the matter is not investigated, but returned by OIA to the institution or region to conduct a Confidential Inquiry, you will be notified upon the completion of that inquiry as to whether it was determined that staff violated, or did not violate policy.

FINDINGS FOR AN APPEAL INQUIRY:

Your appeal is PARTIALLY GRANTED at the ☒ First level ☐ Second level:

- ☐ An inquiry into your allegation (has been / is being) conducted.
☐ An investigation is being conducted by the Office of Internal Affairs

ALL STAFF PERSONNEL MATTERS ARE CONFIDENTIAL IN NATURE. As such, the details of any inquiry will not be shared with staff, members of the public, or inmates. Although you have the right to submit a staff complaint, a request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the staff complaint process. However, you have the right to be notified if after a review of your allegations, it is determined that staff violated CDCR policy. In this case:

- ☐ The inquiry is not yet complete
☒ The inquiry is complete. Staff did not violate CDCR policy.

Allegations of staff misconduct do not limit or restrict the availability of further relief via the inmate appeals process. If you wish to appeal the decision, you must submit your staff complaint appeal through all levels of appeal review up to, and including, the Director's Level of Review. Once a decision has been rendered at the Director's Level of Review, your administrative remedies will be considered exhausted.

R. Grounds
 R. Grounds, Correctional Administrator Complex I

1/11/08
 Date

INMATE APPEAL ROUTE SLIP

To: ~~CA2~~ ¹²⁻⁵⁰⁷ ^{R/A to CA1}

DEC 11 2007

Date: December 3, 2007

From: INMATE APPEALS OFFICE

Re: Appeal Log Number **SVSP-D-07-05091** By Inmate **HIXON, T78115**

Please assign this appeal to appropriate staff for **FIRST** level response.

Appeal Issue: STAFF COMPLAINTS

Due Date: ~~01/10/2008~~ ^{12/17/07} ^{1.10.18}

Special Needs:

^{1.3.8} ~~12/12/07~~

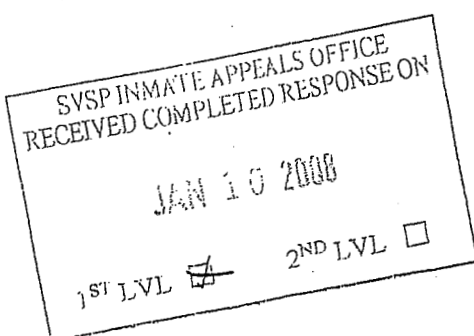
STAFF INSTRUCTIONS: Per Director's Rule 3084.5(f) (2) first level appeal review requires a personal interview with the inmate unless the appeal is granted. This policy is not within the institution's jurisdiction and cannot be waived. Director's Rule 3084.5(f) (3) provides that a telephonic interview may be conducted if the inmate is not available in person.

Begin response with GRANTED, DENIED, PARTIALLY GRANTED or WITHDRAWN. When complete, return appeal to the Appeals Office. All first level appeals require signature of the Division Head. Appeals that are incomplete will be returned for appropriate completion.

Refer to D.O.M. 54100 for instructions.

T. VARIZ, CC-II / E. MEDINA CC-II
Appeals Coordinators
Salinas Valley State Prison

^{P/S R/A to}
^{A yard staff}
^{assigned to Ayard}



RECEIVED

DEC 07 2007

ASSOC WARDEN

STATE OF CALIFORNIA

INMATE/PAROLEE

APPEAL FORM

CDC 602 (12/87)

1 of 3 Copies

STAFF COPY

DEPARTMENT OF CORRECTIONS

Institution/Parole Region

1. SVSP d

1. 07-05091

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2.

2.

CAZ

You may appeal any policy, action or decision which has significant adverse affect upon you. With the exception of Serious Ills, classified committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents, and not more than one additional page of comments to the Appeal Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

C/O J. Cruzon

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM/NUMBER
HIXON	T 78115	N/A	DB 131

A. Discuss Problem:

(A) on 11/11/07 C/O J. Cruzon made some discriminating comments towards me by calling me "a faggot ass bitch" he also stated to me that he would make sure that I go to Ad-Seg w/ a US so I can't go back to this unit. He told me that he was going to write false documentation on me with Sgt. [unclear] so that I can't go back to A yard cause they don't like homosexuals on that yard that is why they're trying to get rid of all of us cause we're nasty & worthless. This is the 2nd 602 I send out but the other two didn't make it. C/O Cruzon has made different threats towards me since I been located in this unit.

If you need more space, attach on additional sheet.

RECD NOV 21 2007 VM1

B. Action requested:

① for J. Cruzon to be reprimanded on this situation ② for this to be brought to justice ③ to not use against me w/ reprisal ④ for me to see a doctor for stress and anxiety ⑤ for this to be placed into HR file ⑥ for me to be transferred ⑦ to have a restraining order against J. Cruzon threats towards me ⑧ to have a restraining order against J. Cruzon threats towards me

RECD NOV 27 2007

Inmate/Parolee Signature:

B. Cruzon

Date Submitted:

11/15/07

B. INFORMAL LEVEL (Date Received)

Staff Response:

BYPASS

Staff Signature:

Date Returned to Inmate:

C. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigators Report, Classification chrono, CDC 128, etc) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

BYPASS

Signature:

Date Submitted:

Note: Property/Funds appeals must be accompanied by a completed Board of Control Form BC-1E, Inmate Claim

CDC Appeal Number:

CC: Ym Hixon T78115

MR. EVANS

I had to send this 602 to
your office due to the fact that
recently my 602 has been com-
up missing so I had to do
it this way please.

please help me

I wish to
be interviewed
by only you
please. There is
so much more
I wish to
discuss
with you.

Respectfully

B Hixm
T 78115
D8-131

01/11/2008 14:59 6294
01/11/2008 14:55 031-b/8-5501

SVSP D1 D2 ADSEG
A PROGRAM

PAGE 01/01
PAGE 01

STATE OF CALIFORNIA
RIGHTS AND RESPONSIBILITY STATEMENT
CDCR 1868 (Rev. 10/06)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

RIGHTS AND RESPONSIBILITY STATEMENT

The California Department of Corrections and Rehabilitation has added departmental language (shown inside brackets, in non-boldface type) for clarification purposes.

Pursuant to Penal Code 749.5, anyone wishing to file an allegation of misconduct by a departmental peace officer must read, sign, and submit the following statement:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER [this includes a departmental peace officer] FOR ANY IMPROPER POLICE [or peace] OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' [or inmates/parolees'] COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN [or inmate/parolee] COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

D-1 116 4

COMPLAINANT'S PRINTED NAME Bradley Hixon	COMPLAINANT'S SIGNATURE <i>Bradley Hixon</i>	DATE SIGNED 1/11/08
INMATE/PAROLEE PRINTED NAME Bradley Hixon	INMATE/PAROLEE'S SIGNATURE <i>Bradley Hixon</i>	CDC NUMBER 77815
RECEIVING STAFF'S PRINTED NAME R. Mejia	RECEIVING STAFF'S SIGNATURE <i>R. Mejia</i>	DATE SIGNED 1/11/08

DISTRIBUTION:

ORIGINAL -
Public - Institution Head/Parole Administrator
Inmate/Parolee - Attach to CDC form 602
Employee - Institution Head/Parole Administrator
COPY - Complainant

STATE OF CALIFORNIA GA-22 (1992)		INMATE REQUEST FOR INTERVIEW		DEPARTMENT () CORRECTIONS	
DATE 2-10-08	TO [Redacted]	FROM (LAST NAME) Hixson		CDC NUMBER TB115	
HOUSING DZ	BED NUMBER 110	WORD ASSIGNMENT	JOB NUMBER	FROM	TO
OTHER ASSIGNMENT (SCHOOL, THERAPY, ETC.)		ASSIGNMENT HOURS		FROM	TO

You will be called in for interview in the near future if the matter cannot be handled by correspondence.

Clearly state your reason for requesting this interview.

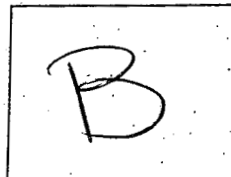
you are not meeting guide lines to my 602 Log # D-07-05091 and I send my Second level response to you and my deadline is almost up your Violating my due process rights this is my 4th request ~~for review~~

the database does not indicate receipt of 07-5091 for second level review. Play Meeting

INTERVIEWER'S SIGNATURE _____ DATE **2/19/08**

DISPOSITION _____

EXHIBIT COVER PAGE



EXHIBIT

DESCRIPTION OF THIS EXHIBIT:

NUMBER OF PAGES TO THIS EXHIBIT: 6 PAGES

JURISDICTION: (CHECK ONLY ONE)

☐

MUNICIPAL COURT

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SUPERIOR COURT

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APPELLATE COURT

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STATE SUPREME COURT

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UNITED STATES DISTRICT COURT

☐

STATE CIRCUIT COURT

☐

UNITED STATES SUPREME COURT

☐

GRAND JURY

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

ARNOLD SCHWARZENEGGER, GOVERNOR

INMATE APPEALS BRANCH

1515 S Street, Sacramento, CA 95814
P.O. Box 942883
Sacramento, CA 94283-0001



January 17, 2008

Appeals Coordinator
Salinas Valley State Prison
P.O. Box 1020
Soledad, CA 93960-1020

RE: HIXON, BRADLEY, T78115,
IAB# 0716890 STAFF COMPLAINTS

To the SVSP Appeals Coordinator:

The Director's Level Inmate Appeals Branch needs your assistance in resolving this inmate appeal which has been screened back to you for further action.

Please respond directly to the appellant. No response to this office is necessary. This appeal appears not to have been processed within the regulatory time constraints. Please ensure that the inmate is informed as to the reason for delay in processing.

Appellant claims that he file a staff complaint appeal with your office and has never received any response. Please see the attached correspondence to verify the appeal in question. Please inform inmate as to the status of appeal.

N. Grannis

N. GRANNIS, Chief
Inmate Appeals Branch

3 of 4
 STATE OF CALIFORNIA
 INMATE/PAROLEE
 APPEAL FORM
 CDC 602 (12/87)

Staff Misconduct Complaint
 DEPARTMENT OF CORRECTIONS
 Location: Institution/Parole Region Log No. Category: 7
 1. SVSP 1.
 2. 2.

You may appeal any policy, action or decision which has significant adverse affect upon you. With the exception of Serious 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeal Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Hixon	T78115		D8.131

A. Discuss Problem: 3391 (A) on 11/10/07 % J Cruzen Made Some discriminating Comments towards me by calling me A "Faggot ASS Bitch" He also state to me that He will make me that I go to Ad-Seg w/a 115 so I can't go back to this Building (2) He said to me that he was going to write false documentation on me with Sgt Metcalfe so that I can't go back to a yard. Cause they don't like homosexuals on that yard that's why their trying to get rid of all of us cause we're nasty & worthless this is the 3rd time I send out for the other two didn't make it. % J Cruzen has made different threats towards me Sir I been located in his unit which is Building (2)

If you need more space, attach on additional sheet.

A. Action requested: ① for % Cruzen to be reprimanded on this situation ② to be brought to justice NOT to use reprisal against me ③ to see a doctor about my stress & distress ④ to be placed in his file ⑤ to have a restraining order on Cruzen ⑥ to be transferred asap out of this prison due to Cruzen's threats towards me.

Inmate/Parolee Signature: [Signature]

Date Submitted: DEC 5 2007

B. INFORMAL LEVEL (Date Received _____)

Staff Response: _____

Staff Signature: _____

Date Returned to Inmate: _____

C. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigators Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for procession within 15 days of receipt of response.

Signature: _____

Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control Form BC-1 E. Inmate Claim

CDC Appeal Number: _____

DUPLICATE OF 0-5091 DELIVERED FEB 06 2008

NOV 27 2007

05/18/07

To Whom it may Concern.

My name is Bradley M. Hixon T78115
I am currently housed in Salinas Valley State
Prison (Ad-seg) on retaliation against me
based on 602 Complaint that I filed on different
staff members on A yard. We recently submitted
a 602 Appeal on 2 staff members located on
A yard. (See 602 Appeal enclosed) I am a
Transgendered pre-op inmate and was
transferred from Mule-Creek in sometime
around Nov. 2006. I was transferred on a Non-
Adverse Transfer with no disciplinary action
I've been through so much discrimination
here based on my criminal offense and sexual
orientation I've been set up on charges that
I didn't commit or say. I've been physically
abused and verbally harassed by A yard staff.
My family is aware of the situation and I
just need to be interviewed and a solution
made please help me.

enclosed

cc. 602 Appeal

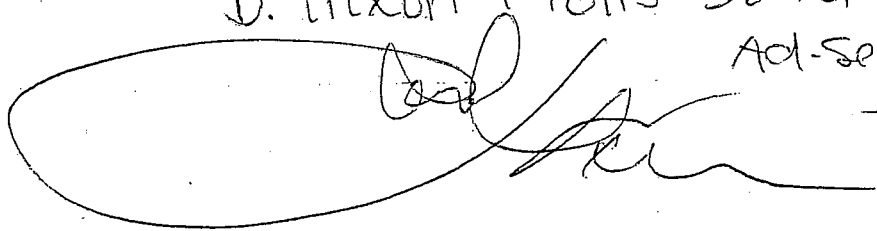
I fear for my life
if housed on A yard
around Sgt Metcalfe
or C/O J. Cruzon

Respectfully,

Ks. Ayana -ACA-

B. Hixon T78115 D8.131

Ad-seg



Dear chief of Inmate appeals...

12-2-07

My name is Bradley M Hixon T78115 I'm currently housed in Ad-seg up in Salinas Valley State prison, I filed a 602 inmate appeals on Correctional Officer J. Cruzen who is currently assigned to Alfa yard (SNY) Based on Staff Misconduct with me Enclosed is a extra copy of my 602 I filed and the appeals coordinator is and has objectly failed to responded to my 602 that I filed within my normal time limits that I have to file (15 days)

My order is for you to please order prison official to remedy the problem on the theory that the delayed appeal response violates CDC Rules and infringed upon the right of access to the courts. I've already filed 283 Civil Complaint to the court but Salinas Valley State prison Appeals Coordinator has failed to send me a Log # and a reasonable response.

This issue has been on going with correctional officer Cruzen for over a period of 1 month until my placement in Ad-seg.

Please See attached Memorandum dated


By Appellant on 12-2-07 / 602 Appeal Comp:

please forward my 602 and have them process it on time

Thank you.

Respectfully.

B. Hixon T78115


T-15

Memorandum

December 2, 2007

Inmate: Bradley Hixon CDC # T78115 DB-131

TO: Chief Inmate Appeals Coordinator. (Sacramento)

Good Evening Chief, Please take this Question into consideration concerning your Appeal Coordinator CC-II T. Variz who Misuse His Authority and Show unprofessional and inability to Perform His duties as A CC-II Appeals Coordinator. Chief this individual have been previously write up for his corrupt races discriminations and abuse & His participate unethical illegal criminal acts by not allowing appellant to file a CDC Inmate/parolee appeal form 602. So therefore Chief I have no other mean at S.V.SP to be able to exhaust my administrative remedies through that office...

Im truly seeking Justice in the interest by you Sir. Because chief, as I have informed my family members about this matter that Im legally in the Protected Custody of CDC Please help me Chief Respectfully Submitted. also I have filed A Civil Suit

Respectfully,

1/4 B. Hixon T78115 DB-131

PS (See attached Exhibit)
"A" Section

Attached to 602 Appeal.

STATE OF CALIFORNIA
 RIGHTS AND RESPONSIBILITY STATEMENT
 CDCR 1858 (Rev. 10/06)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

RIGHTS AND RESPONSIBILITY STATEMENT

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COMPLAINANT'S PRINTED NAME Bradley Hixon	COMPLAINANT'S SIGNATURE <i>BM Hixon</i>	DATE SIGNED 11/15/07	
INMATE/PAROLEE PRINTED NAME Bradley Hixon	INMATE/PAROLEE'S SIGNATURE <i>BM Hixon</i>	CDC NUMBER T78115	DATE SIGNED 11/15/07
RECEIVING STAFF'S PRINTED NAME	RECEIVING STAFF'S SIGNATURE	DATE SIGNED	

DISTRIBUTION:

ORIGINAL -

Public - Institution Head/Parole Administrator

Inmate/Parolee - Attach to CDC form 602

Employee - Institution Head/Parole Administrator

COPY - Complainant

AFFIDAVIT

I, Michael Drebert K89472, declare, under the penalty of perjury that I am a witness to the following events that took place on November 11, 2007 and that the information I offer throughout this statement is true and correct.

On Nov. 11, 2007 while housed in A2-112, my cellmate 1/M Hixon T78115 failed to return to the cell that we were housed in, after the conclusion of dayroom (approx. 3:00 P.M.) After dinner, at approx. 6:00 P.M., an inmate informed my that 1/M Hixon was going to Ad-seg. A few minutes later 9/O J. Cruzen walked by my cell for count and I attempted to ask him if my cellmate (1/M Hixon) was going to "the hole" and why? He ignored my questions, gave me a "dirty look" and kept walking. A few minutes after that 9/O Noguera came to my cell door asking for 1/M Hixon's property. I then asked him (9/O Noguera) why 1/M Hixon was going to "the hole" He told me that the reason was petty and that he attempted to speak up for 1/M Hixon but 9/O J. Cruzen was not hearing it and that 1/M Hixon would be going to "the hole" because 9/O J. Cruzen said he felt "threatened".

Upon my arrival to Ad-seg, 1/M Hixon and I agreed to be cellmates and have remained cellmates to this day. On or about the second week of December 2007, I am a witness to the fact that 1/M Hixon's mail (and legal mail) has disappeared after being picked up by staff.

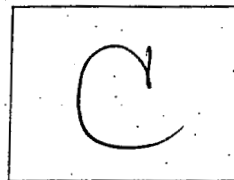
The foregoing is true and correct. This statement has been written and signed without stress or duress.

Michael Drebert K89472

Michael Drebert

Date: 1/21/08

EXHIBIT COVER PAGE



EXHIBIT

DESCRIPTION OF THIS EXHIBIT:

NUMBER OF PAGES TO THIS EXHIBIT: 5 PAGES

JURISDICTION: (CHECK ONLY ONE)

☐

MUNICIPAL COURT

☐

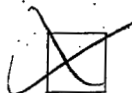
SUPERIOR COURT

☐

APPELLATE COURT

☐

STATE SUPREME COURT



UNITED STATES DISTRICT COURT

☐

STATE CIRCUIT COURT

☐

UNITED STATES SUPREME COURT

☐

GRAND JURY

STATE OF CALIFORNIA

INMATE/PAROLEE
APPEAL FORM
CDC 602 (12/87)

Location Institution Parole Region

Form No.

Calendar

1.

1.

2.

2.

You may appeal any policy, action or decision which has significant adverse affect upon you. With the exception of Serious 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeal Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME HIXON NUMBER T78115 ASSIGNMENT N/A UNIT/ROOM NUMBER D8-131

A. Discuss Problem:

S 3391 (A) on 11/11/07 C/O J Cruzen made some discrimination comments towards me. By calling me "A Faggot Ass Bitch" He also stated that he will make sure that I go to Ad-Seq w/a 115 so I can go back to his building. He said to me that he was going to write false documentation on me with Sgt Metcalfe. So that I can go back to a yard. Cause they don't like homosexuals on that yard that is why they're trying to get rid of all of us. Cause we're nasty and worthless this is the 3rd loc I send out but the other two didn't make it. C/O J Cruzen has made constant threats towards me since I been located in his building which

If you need more space, attach on additional sheet.

A. Action requested:

For J Cruzen to be reprimanded on situations like this to be brought to justice. To not use against me with reprisal. For me to doctor for my stress and ~~and~~ distress. For this to be placed into his file. For me to be transferred out the institution due to C/O J Cruzen's threats towards me. and to have a restraining order against him. Asp Please

Inmate/Parolee Signature:

Bradley Hixon

Date Submitted: 11/15/07

B. INFORMAL LEVEL (Date Received)

Staff Response

RECEIVED JAN 04 2008

DUPLICATE
07-50a1

Staff Signature:

Date Returned to Inmate:

C. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigators Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for procession within 15 days of receipt of response.

Signature:

Date Submitted:

Note: Property/Funds appeals must be accompanied by a completed

Board of Control Form BC-1E, Inmate Claim

CDC Appeal Number:

cc: Ku Hixon T78115
warden Evans Susp

Internal Affairs

UNITED STATES DISTRICT COURT

Northern DISTRICT OF CALIFORNIA

11	Petitioner/Plaintiff)	CASE No. <u>C07-6078 WHA</u>
12	<u>Bradley M. Hixon</u>)	MOTION FOR APPOINTMENT
13	vs.)	OF COUNSEL
14	<u>c/o J. Cruzen</u>)	
15	Defendant/Respondent.)	

COMES NOW, Petitioner/Plaintiff Bradley M. Hixon
respectfully requesting appointment of counsel pursuant to 28
United States Code (U.S.C.), §1915(d). Appointment of counsel
is necessary because Petitioner is a state prisoner, who is
unlearned in the law, having only a 2.0 grade education;
indigent and cannot afford to obtain counsel, and because of
his incarceration, is unable to obtain crucial evidence under
discovery that only an attorney can obtain through cooperation.

Although the District Court cannot appoint counsel per se
MALLARD v. UNITED STATES COURT for the SOUTHERN DISTRICT OF
IOWA, 490 U.S. 296, 307-308 (1989)), the District Court does
not have broad discretion to request counsel for indigents
under 28 U.S.C., § 1915(d); however, the appointment of Counsel

1 is reserved for exceptional circumstances. No clear definition
2 of this standard exists, but it turns on the quality of two (2)
3 basic factors. The two-prong test is:

4 "A finding of exceptional circumstances requires an
5 evaluation of both 'the likelihood of success on the
6 merits and the ability of the petitioner to articulate his
7 claims pro se in light of the complexity of the legal
8 issues involved.' Neither of these factors is disposi-
9 tive and both must be viewed together before reaching a
10 decision." TERRELL v BREWER 935 F.2d 1015 (9th Cir. 1991).

11 "First, the District Court should consider the merits of
12 the indigent's claim. Even where the claim is not frivolous,
13 counsel is often unwarranted where the indigent's chances of
14 success are extremely slim, such as, 'because the law is
15 clearly settled. Such action would be futile'". LIGARE v
16 HARRIS, 128 F.2d 582, 583 (7th Cir. 1942)).

17 Petitioner/Plaintiff contends that he has passed the first
18 prong of TERRELL v BREWER (supra) as his claim(s) are not
19 meritless because under the 1996 Prison Litigation Reform Act,
20 all in forma pauperis actions brought by prisoners are to be
21 screened and summarily dismissed sua sponte if they are found
22 to be frivolous, malicious, or fails to state a claim on which
23 relief can be granted. RODGERS v DEBOE, 950 F.Supp. 1024, 1028
(S.D. Cal. 1977); 28 U.S.C. § 1915(e)(2)(B)(i) and (ii)).

24 Also, there is no "clearly settled" case law making the claim
25 of "futile," as every such claim as presented in Petitioner's/
26 Plaintiff's complaint must stand or fall on its own merit if
27 the claims are supported by evidence, Petitioner/Plaintiff
28 prevails, and if not, he loses.

Whether legal issues involved are complex or not is
subjective. Certainly, to a qualified and skillfully trained

1 attorney, no legal issue is too complex, if the legal issue is
2 in that attorney's field of expertise. But even a professional
3 attorney is not expected to be competent outside his or her
4 field of training. MALLARD v UNITED STATES DISTRICT COURT for
5 the SOUTHERN DISTRICT of IOWA, 490 U.S. 296, supra). There-
6 fore, how can a prisoner pro se litigant, with no more than
7 a(n) 2.0 grade education, be expected to overcome complex
8 procedural rules and answer responses prepared by teams of
9 highly skilled and seasoned state's attorneys, whose only job
10 is to thwart prisoner law suits?

11 "Most actions require development of further facts during
12 litigation and a pro se incarcerated litigant will seldom be in
13 a position to investigate all the necessary facts to support
14 the case." WILBORN v ESCALDERON, 781 F.2d 1328, 1331 (9th
15 Cir. 1986)).

16 Therefore, "Where the indigent is in no position to
17 investigate crucial facts, counsel should be appointed
18 MACLIN v FREAKE, 650 F.2d 885, 886 (7th Cir. 1981)).

19 It has long been held in this Circuit that "[it] might be
20 that an appointed attorney could, by way of deposition, obviate
21 the necessity of transporting the plaintiff, or, at least,
22 preserve testimony for subsequent hearings." UNITED STATES v
23 MADDEN, 352 F.2d 792, 793 fn.1 (9th Cir. 1965).

24 If the Court does not request that counsel represent
25 Petitioner, it is in all likelihood that Petitioner's/
26 Plaintiff's case will not only be prejudiced, but lost. Not
27 for want of meritorious claim, but rather for want of evidence
28 to prove [the] merit within the claims, which could have only

1 been obtained with and through the professional expertise
2 and assistance of counsel.

3 CONCLUSION

4 For the foregoing reasons, and in the "Interest of
5 fairness in justice," Petitioner/Plaintiff respectfully that
6 the Court appoint counsel in this matter before the Court.

7 Respectfully submitted,

8 DATED: May 13, 2008

Bracey M. Dixon
9 Plaintiff/Petitioner

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